

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH DUNBAR,

Plaintiff,

v.

PATRICIA CARUSO, et al.,

Defendants.

CASE NO. 1:11-CV-10123
JUDGE THOMAS L. LUDDINGTON
MAGISTRATE JUDGE PAUL J. KOMIVES

COMBINED RECOMMENDATION ON DEFENDANT McGRAW'S MOTION FOR
SUMMARY JUDGMENT (docket #31) and ORDER DENYING AS MOOT PLAINTIFF'S
MOTIONS TO FILE SUPPLEMENTAL PLEADING (docket #22 & 23)

Plaintiff Joseph G. Dunbar, a state prisoner, filed a *pro se* civil rights complaint in this Court on January 10, 2011. On July 12, 2011, I filed a Report recommending that the Court deny without prejudice the parties' cross-motions for summary judgment, summarily dismiss some of the claims asserted by plaintiff pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), and require plaintiff to file a more definite statement in the form of an amended complaint with respect to his claims alleging: (a) assault by prisoners and guards; (b) denial of or interference with his legal mail; (c) denial of a prison job based on race; and (d) retaliation. On August 9, 2011, the Court entered an Order adopting my Report and requiring plaintiff to file an amended complaint within 21 days of service of the Court's Order.

Still pending before the Court are three additional motions filed by the parties. On May 26 and June 7, 2011, plaintiff filed two motions to for leave to file a supplemental pleading. In my prior Report, I recommended that plaintiff be permitted to include in his amended complaint any of the claims raised in his motions for leave to supplement which are not duplicative of the claims that

were subject to summary dismissal. Because plaintiff may raise these claims in his amended complaint, his motions to supplement are now moot. Also pending before the Court is defendant McGraw's motion for summary judgment, filed on July 12, 2011, the date I issued my Report. Because plaintiff will be filing an amended complaint, it would be premature to rule on any of the issues raised in defendant McGraw's motion for summary judgment. The amended complaint may assert different factual allegations or legal claims against defendant McGraw, or may include no claims against her at all.

Accordingly, it is hereby RECOMMENDED that the District Judge DENY AS PREMATURE defendant McGraw's motion for summary judgment, WITHOUT PREJUDICE to defendant seeking summary judgment anew after plaintiff files his amended complaint. It is further ORDERED that plaintiff's motions to file supplemental pleading are hereby DENIED AS MOOT.

The attention of the parties is drawn to FED. R. CIV. P. 72(a) and (b), both of which provide a period of fourteen days from the date of this Order and Recommendation within which to file any objections for consideration by the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

IT IS SO RECOMMENDED AND ORDERED.

s/Paul J. Komives
PAUL J. KOMIVES
UNITED STATES MAGISTRATE JUDGE

Dated: 9/7/11

The undersigned certifies that a copy of the foregoing order was served on the attorneys of record and by electronic means or U.S. Mail on September 7, 2011.

s/Eddrey Butts
Case Manager